

FILE COPY

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION
FOR A REAL ESTATE BROKER'S
LICENSE OF

MICHAEL P. ROSSETER,
APPLICANT.

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FINAL DECISION
AND ORDER
LS9205181REB

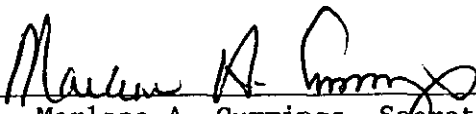
The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 24th day of August, 1992.


Marlene A. Cummings, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF THE APPLICATION
FOR A REAL ESTATE BROKER'S
LICENSE OF

LS9205181REB

MICHAEL P. ROSSETER,

Applicant

PROPOSED DECISION

The parties to this proceeding for purposes of s. 227.53, Stats., are:

Michael P. Rosseter
137 North Monroe Street
Waterloo, WI 53594

Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708-8935

A Class I hearing was conducted in this matter on June 30, 1992, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Roger R. Hall. Mr. Rosseter did not appear, nor did anyone appear purporting to represent him.

Based on the entire record in this case, the administrative law judge recommends that the Department of Regulation & Licensing (department) adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Michael P. Rosseter (applicant), 137 North Monroe Street, Waterloo, Wisconsin, applied for a license to practice as a real estate broker in Wisconsin by

application dated July 16, 1991. By its Notice of Denial and Notice of Right to Request Hearing on Denial dated March 25, 1992, the department notified applicant that his application was denied. Applicant requested a hearing on the denial by his letter dated April 20, 1992.

2. The department's Notice of Denial and Notice of Right to Request Hearing on Denial notified applicant that his application was denied based in part on criminal convictions the circumstances of which substantially relate to the practice of real estate.

3. On December 15, 1986, in Case 86 CF 867, the Circuit Court for Dane County found applicant guilty of the crime of aggravated battery, in violation of Wis. Stats. sec. 940.19(3). Applicant was sentenced to 18 months in prison.

4. On February 29, 1988, the Circuit Court for Dane County found applicant guilty of Bail Jumping, in violation of Wis. Stats. sec. 946.49(1)(b). Applicant was sentenced to three years in prison.

5. On February 14, 1991, applicant pleaded No Contest to the charge of Operating a Motor Vehicle While Intoxicated.

6. The circumstances of applicant's convictions for aggravated battery, bail jumping and operating a motor vehicle while intoxicated are substantially related to the circumstances of the practice of a real estate broker.

7. Since October 31, 1991, applicant has participated in the alcohol and drug treatment program at the Mental Health Center of Dane County, Inc., Madison, Wisconsin.

8. Applicant submitted with his application evidence of having completed 45 hours of educational programs in real estate appraising, financing and marketing on March 15, 1990, and 45 classroom hours of educational programs in real property law in July, 1990, in satisfaction of the educational requirements for a broker's license in effect between June 1, 1987, and May 11, 1990.

9. The department's Notice of Denial and Notice of Right to Request Hearing on Denial notified applicant that his application was denied based in part on failure by applicant to meet the educational requirements set forth at Wis. Stats sec. 452.09(2), as amended by 1989 Wisconsin Act 341. The Act was effective May 11, 1990, and provides as follows:

(2) EDUCATIONAL REQUIREMENTS FOR APPLICANTS FOR LICENSES. (a) Each applicant for a salesperson's license shall submit

to the department evidence satisfactory to the department of successful completion of 72 classroom hours of educational programs approved for this purpose under s. 452.05(1)(c). The department may waive the requirement under this paragraph upon proof that the applicant has received 10 academic credits in real estate or real estate related law courses from an accredited institution of higher education.

(c) Except as provided in par. (d), each applicant for a broker's license shall do all of the following:

1. Satisfy or obtain a waiver of the requirement under par. (a) or submit proof of licensure as a salesperson under this chapter.

2. Submit to the department evidence satisfactory to the department of successful completion of 36 classroom hours of educational programs in business management approved for this purpose under s. 452.05(1)(c). No classroom hours applied to satisfy the requirement under subd. 1 may be applied to satisfy the requirement under this subdivision.

(d) The department may waive the requirements under par. (c) upon proof that the applicant has received 20 academic credits in real estate or real estate related law courses from an institution of higher education or that the applicant is licensed to practice law in this state.

10. With his request for hearing on the denial of the license, applicant submitted evidence of having completed sufficient additional academic credits at Madison Area Technical College to meet the educational requirements for a broker's license set forth at Wis. Stats. sec. 455.09(2) (1990).

CONCLUSIONS OF LAW

1. The Department of Regulation & Licensing has jurisdiction in this matter pursuant to Wis. Stats. sec. 452.05.

2. The circumstances of applicant's convictions for aggravated battery, bail jumping and operating a motor vehicle while intoxicated are substantially related to the circumstances of the practice of a real estate broker within the meaning of Wis. Stats. sec. 111.335(1)(c).

3. Applicant has met the educational requirements for a broker's license established by Wis. Stats. sec. 452.09(2).

ORDER

NOW, THEREFORE, IT IS ORDERED that the Order of the department denying the application of Michael P. Rosseter for a license to practice as a broker in the State of Wisconsin be, and hereby is, affirmed.

IT IS FURTHER ORDERED that upon submission by Michael P. Rosseter of evidence of having completed two years of continuous and successful participation in the alcohol and drug treatment program at the Mental Health Center of Dane County, Inc., or in another treatment program satisfactory to the department; and of evidence that he has not during such period engaged in any further conduct which would provide a basis for denial of licensure, the department shall grant the license to practice as a real estate broker.

OPINION

The denial of Mr. Rosseter's license had two bases. First, that he had not completed the educational requirements set forth at Wis. Stats. sec. 452.09(2), as amended effective May 11, 1991; and second, that he has been convicted of crimes the circumstances of which substantially relate to the circumstances of the practice of a real estate broker.

As set forth in the Findings of Fact, Mr. Rosseter submitted with his application evidence of having completed 90 classroom hours of education programs in real estate meeting the educational requirements for a broker's license under that version of section 452.09(2) in effect between June 1, 1987, and May 11, 1990. Because his application was filed on or after July 16, 1991, however, he was required to comply with section 452.09(2), as amended, which requires that the applicant have completed the 72 hours of educational programs required for a salesperson's license, and have completed as well either an additional 36 hours of approved coursework in business management, or an additional 20 academic credits in real estate or real estate related law courses from "an accredited institution of higher education." Based on the information filed with the application, the department was correct in concluding that applicant had failed to meet the educational requirements for a broker's license.

A funny thing happened on the way to the hearing, however. At the time Mr. Rosseter requested a hearing on the denial of his license, he submitted evidence of additional coursework in real estate completed at Madison Area Technical College. Mr. Hansen's testimony at hearing as to the effect of this further evidence was as follows:

I would say that the transcript from MATC, the last page of the exhibit, shows that he has obtained 20 semester hour credits at an institution of higher learning in real estate or real estate related law and that does satisfy the education requirement in my estimation. However, one cannot avoid the additional technicality which I'm not sure I can rule on or make a firm decision about in a minute or two; and that is that under the new law one must complete the education before taking the licensing examination. If you want to take the time, the -- attached to the application for his license are the certificates of exam scores, and Mr. Rosseter had passed the broker's exam on May 18th of 1991. And he had -- his transcript on the other hand shows that he had taken during the 1990-'91 second semester some of the education which would be a requirement for the 20 semester hour total So it is -- it is quite possible and probable that he did obtain 20 semester hour credits which would satisfy the education requirement and that he completed that education before he took the broker's exam on May 18th of 1991. . . . I'm assuming -- I'm assuming that [the second semester of 1990-1991] ended in May of 1991 and probably around May 16th or 18th. (*tr.*, pp. 14-15)

The evidence is clear that Mr. Rosseter has completed the educational requirements for licensure as a broker.

The issue of Mr. Rosseter's conviction record is somewhat more difficult. He has a long arrest record, mostly for disorderly conduct, culminating in the convictions set forth in the findings. The question is whether the circumstances of those convictions are substantially related to the circumstances of the practices of a real estate broker. If so, then under section 111.335(1)(c), Stats., the department may consider the convictions in making its licensing decision.¹

¹ Section 111.322, Stats. prohibits discrimination in licensing based upon a conviction record. Section 111.335(1)(c) creates an exception to that prohibition, stating:

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity. . . .

The Wisconsin Supreme Court most recently defined the criteria for establishing substantial relationship in *County of Milwaukee v. LIRC*, 139 Wis.2d 805 (1987). Defendant in that case had been convicted of homicide by reckless conduct and of neglect of nursing home residents. The court found that in his capacity as nursing home administrator, the defendant had failed to provide for necessary staffing and supplies to avoid patient harm. At the time of conviction, defendant was employed by the County of Milwaukee as a Crisis Intervention Specialist, and he was discharged from employment as a result of the conviction. The Supreme Court overturned the decisions of the Milwaukee Circuit Court and the Court of Appeals by finding that the circumstances of the conviction were substantially related to the circumstances of employment as a crisis intervention specialist.

Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. 139 Wis. 2d at 824.

The circumstances of Mr. Rosseter's convictions -- particularly the aggravated battery conviction, which involved his having attacked a bartender with a broken beer bottle -- evince a disregard not only of the law but of the well-being of other persons as well. Baron Perlman, Ph.D., did a psychological evaluation of Mr. Rosseter at the Wisconsin Drug Abuse Correctional Center, where Mr. Rosseter underwent a ten-week treatment program during his period of incarceration. Dr. Perlman states:

To summarize the file briefly, Mr. Rosseter has a lifelong problem of controlling his anger and seems to have a lifelong pattern of acting out. He's never been receptive to treatment and seems to be distant and fearful of people. He seems to relate to people by intimidation, almost in an explosive manner.

If the traits suggested by Mr. Rosseter's convictions, and described by Dr. Perlman, were to be manifested by one practicing as a broker, there is no question but that the health, safety and welfare of one engaging the services of such a broker could be said to be -- quite literally -- at risk.

Again, the ALJ credits Mr. Hansen's testimony as to the nexus between Mr. Rosseter's previous criminal conduct and the requirements for one practicing real estate in a manner consistent with the public health, safety and welfare.

[A broker] has to be able to relate to people. It's constant people contact and satisfying the needs of people in their purchasing and selling real estate. The person has to be reliable and dependable. Has to be at the assigned place. If the person says that he or she will meet prospective purchasers at a home at 6:30 in the evening, the person has to be there and has to be in a frame of mind and have control over himself or herself as to be able to deal with legal issues and other practical issues. The person has to have the ability to follow rules and legal procedures. . . . [Mr. Rosseter's] record shows that he has not been very successful following rules and laws. And that's paramount in the real estate industry because a great portion of the practice is really legal practice; a limited practice of law which has to have full regard for legal requirements, writings and other matters. (*tr.*, pp. 8,9)

If the foregoing was the only consideration here, the ALJ would not hesitate to recommend that the license be denied and leave it at that. There is more, however.

Following participation by Mr. Rosseter in the ten-week program at the Wisconsin Abuse Correctional Center, his social worker, Brian Dunn, did an assessment memo dated November 2, 1989, which concludes with a description of Mr. Rosseter's personal therapy plan after his release from prison. Among Mr. Rosseter's stated goals was "to attend school and find gainful employment." Notwithstanding Mr. Dunn's concern that in attempting to seek additional schooling, Mr. Rosseter "may be setting himself up for failure," Mr. Rosseter did in fact further his education, including completion of three semesters of work at Madison Area Technical College in the areas of real estate, marketing and sales. This accomplishment, along with the fact that he has taken and passed the difficult broker's licensing examination, speaks volumes in terms of his rehabilitative progress.

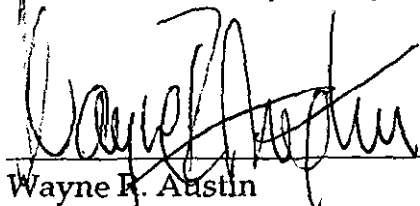
It is true that the third conviction of concern here, that of operating a vehicle while intoxicated, occurred as recently as February, 1991. It is also true, however, that in October, 1991, Mr. Rosseter began participation in the alcohol and drug treatment program at Mental Health Center of Dane County, and that as of March 18, 1992, he was compliant with that program. The ALJ therefore recommends that if Mr. Rosseter is able to successfully and continuously participate in that program or another such program acceptable to the department for a period of two

Michael P. Rosseter

Page 8

years, and if he has not during that period engaged in any further conduct which would provide a basis for denial of licensure, he be granted the license for which he's applied.

Dated this 31st day of July, 1992.

A handwritten signature in dark ink, appearing to read "Wayne R. Austin", is written over a horizontal line.

Wayne R. Austin
Administrative Law Judge

WRA:BDLS2:1264

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Department of Regulation and Licensing.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Department of Regulation And Licensing.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Department of Regulation and Licensing.

The date of mailing of this decision is September 2, 1992.